

Message Text

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ACTION EA-12

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SUBJECT: REVISION OF PHILIPPINE PATENT LAW

REFS: A. 77 MANILA A-97, B. 76 STATE 177103

1. SUMMARY. A NEW PD REVISING CERTAIN ASPECTS OF THE PHILIPPINE PATENT LAW HAS BEEN SIGNED. QUESTIONS REMAIN AS TO HOW IT WILL BE IMPLEMENTED. FOREIGN PRIVATE SECTOR AND FOREIGN EMBASSIES ARE STUDYING THE BEST MEANS TO REGISTER OPPOSITION TO THE NEW LAW. END SUMMARY.

2. THE REVISIONS OF THE PHILIPPINE PATENT LAW DISCUSSED IN REFERENCES (AND PREVIOUS) HAVE SURFACED AGAIN AS PRESIDENTIAL DECREE NO. 1263 DATED DECEMBER 14, 1977 ENTITLED "AMENDING PORTIONS OF REPUBLIC ACT. NO. 165 OTHERWISE KNOWN AS THE PATENT LAW". TEXT OF NEW DECREE IS TAKEN ALMOST VERBATIM FROM PREVIOUS DRAFT DECREE WHICH DEPARTMENT COMMENTED ON IN REFTEL B. PROBLEMS OF CEILINGS ON ROYALTIES, AND COMPULSORY LICENSING PERSIST.

3. DECREE CAME AS SURPRISE TO ALMOST ALL INTERESTED PARTIES WHEN IT FINALLY SURFACED THIS WEEK. IT IS TO COME INTO EFFECT 30 DAYS FROM SIGNING, OR EFFECTIVELY, JANUARY 16, 1978. ACCORDING TO TRADE SOURCES, OFFICIALS AT PHILIPPINE PATENT OFFICE, DEPARTMENT OF TRADE, DEPARTMENT
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OF INDUSTRY, AND NATIONAL SCIENCE DEVELOPMENT BOARD, WERE CAUGHT FLAT-FOOTED, AS WAS THE FOREIGN PRIVATE SECTOR. APPARENTLY, THE ORIGINATORS OF THE PATENT LAW REVISION AT THE U.P. LAW CENTER AND TECHNOLOGY RESOURCES CENTER WERE SOMEHOW SUCCESSFUL IN OBTAINING THE PRESIDENT'S SIGNATURE ON THIS DECREE IN A VACUUM.

4. THERE IS STILL A QUESTION OF WHETHER THE DECREE IS "PROMULGATED", AS IT HAS NOT YET BEEN OFFICIALLY PUBLISHED AND THE IMPLEMENTING RULES ARE STILL TO BE DRAFTED. MEETINGS ARE UNDERWAY AT THE DEPARTMENT OF TRADE AND PATENT OFFICE ON HOW TO HANDLE THIS DECREE. THE OFFICIALS RESPONSE TO ENQUIRIES AT THE PATENT OFFICE IS "NO COMMENT" UNTIL NEXT WEEK WHEN A COORDINATED DEPARTMENT OF TRADE POSITION ON THE DECREE IS EXPECTED. REPORTS FROM A VARIETY OF SOURCES INDICATE SECRETARY OF TRADE QUIAZON, ASSISTANT SECRETARY VALDEPENAS, SECRETARY OF INDUSTRY PATERNO, AND PATENT DIRECTOR EVALLE STILL HAVE DIFFICULTIES WITH THE REVISIONS.

5. EMBOFF HAS BEGUN SERIES OF CALLS ON GOVERNMENT OFFICIALS TO RENEW AWARENESS OF USG POSITION ON PATENT LAW REVISION AS DESCRIBED IN REFTEL B. EEC EMBASSY REPS ARE MEETING NEXT WEEK, JANUARY 24, TO DECIDE ON POSSIBLE COMMON POSITION TO TAKE VIS-A-VIS GOP ON THIS MATTER. PRELIMINARY THOUGHTS ARE TO COORDINATE ACTIONS WITH US AND JAPANESE EMBASSIES AS WELL.

6. IN THE MEANTIME, THE DRUG ASSOCIATION OF THE PHILIPPINES, LEAAR IN OPPOSING THE NEW LAW, MET WITH SECRETARY QUIAZON JANUARY 19, AND THE AMCHAM AND OTHER FOREIGN INVESTORS WILL MEET WITH PRESIDENT MARCOS JANUARY 21 TO DISCUSS THE INVESTMENT CLIMATE IN GENERAL. LIMITED OFFICIAL USE

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THE NEW PATENT LAW WILL BE ONE OF THE POINTS RAISED.

7. THE AMERICAN CHAMBER OF COMMERCE HAS ASKED THE EMBASSY IN A LETTER (BEING POUCHED EA/PHL) TO INFORM THE DEPARTMENT AND BUREAU OF PATENTS OF THESE DEVELOPMENTS "SO THAT THE USG MAY AGAIN GO ON RECORD IN OPPOSING THIS ACTION". OTHER RELATIVE EXCEPRTS FROM THE AMCHAM LETTER ARE: BEGIN QUOTE:

WE BELIEVE THIS IS YET ANOTHER INSTANCE OF THE PHILIPPINE GOVERNMENT CHANGING THE GROUND RULES AFTER THE GAME HAS STARTED. WE ARE AT A LOSS TO UNDERSTAND HOW THE PHILIPPINE GOVERNMENT CAN IMPROVE ITS IMAGE TO FOREIGN INVESTORS IF THEY IGNORE INTERNATIONAL CONVENTIONS ON THE USE OF INDUSTRIAL PROPERTY RIGHTS.

THIS EXPERIENCE ONCE AGAIN REINFORCES OUR BELIEF THAT ANY NEW TRADE AGREEMENT BETWEEN THE PHILIPPINES AND THE UNITED STATES SHOULD MOST CERTAINLY CONTAIN A "NON-DISCRIMINATION" CLAUSE. ALTHOUGH P.D. 1263 APPLIES TO FILIPINOS AND FOREIGNERS ALIKE, IT IS QUITE OBVIOUS THAT ONLY THE LATTER GROUP STANDS TO BE AFFECTED. END

QUOTE.

8. COMMENT: EMBASSY HAS ALREADY BEGUN CAMPAIGN TO REMIND GOP OF USG CONCERN ON THIS MATTER. HOWEVER, WE WOULD WELCOME ANY ADDITIONAL THOUGHTS DEPARTMENT AND/OR BUREAU OF PATENTS MAY HAVE ON BEST MEANS TO "GO ON RECORD OPPOSING THIS ACTION". WE WOULD BE INTERESTED IN ANY DATA DEPARTMENT HAS ON EFFECT ON INVESTMENTS FLOWS TO OTHER COUNTRIES THAT ESTABLISHED CEILINGS ON ROYALTIES AND SHORT FUSED COMPULSORY LICENSING. WE ARE NOT CONVINCED THIS PD IS CAST IN BRONZE, AND BELIEVE THAT CONCERTED OPPOSITION BY THE PRIVATE SECTOR, WITH LOW-KEY ASSIST FROM VARIOUS EMBASSIES MAY HAVE SOME SUCCESS IN AT LEAST SOFEEING SOME OF THE MORE ONEROUS ASPECTS LIMITED OFFICIAL USE

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OF THE DECREE. END COMMENT.
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